

**ASSEMBLY, No. 3625**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED MARCH 17, 2022

**Sponsored by:**

**Assemblyman PARKER SPACE**

**District 24 (Morris, Sussex and Warren)**

**Assemblyman HAROLD "HAL" J. WIRTHS**

**District 24 (Morris, Sussex and Warren)**

**SYNOPSIS**

Revises “Administrative Procedure Act” concerning socio-economic impact statements for proposed rule-making.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning rule-making and amending and supplementing  
2 P.L.1968, c.410.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to  
8 read as follows:

9 4. (a) Prior to the adoption, amendment, or repeal of any rule,  
10 except as may be otherwise provided, the agency shall:

11 (1) Give at least 30 days' notice of its intended action. The  
12 notice shall include a statement of either the terms or substance of  
13 the intended action or a description of the subjects and issues  
14 involved, and the time when, the place where, and the manner in  
15 which interested persons may present their views thereon. The  
16 notice shall be mailed to all persons who have made timely requests  
17 of the agency for advance notice of its rule-making proceedings  
18 and, in addition to any other public notice required by law, shall be  
19 published in the New Jersey Register. Notice shall also be  
20 distributed to the news media maintaining a press office to cover  
21 the State House Complex, and made available for public viewing  
22 through publication on the agency's Internet website. Each agency  
23 shall additionally publicize the intended action and shall adopt rules  
24 to prescribe the manner in which it will do so. In order to inform  
25 those persons most likely to be affected by or interested in the  
26 intended action, each agency shall distribute notice of its intended  
27 action to interested persons, and shall publicize the same, through  
28 the use of an electronic mailing list or similar type of subscription-  
29 based e-mail service. Additional publicity methods that may be  
30 employed include publication of the notice in newspapers of general  
31 circulation or in trade, industry, governmental or professional  
32 publications, distribution of press releases to the news media and  
33 posting of notices in appropriate locations, including the agency's  
34 Internet website. The rules shall prescribe the circumstances under  
35 which each additional method shall be employed;

36 (2) Prepare for public distribution at the time the notice appears  
37 in the Register, and make available for public viewing through  
38 publication on the agency's Internet website, a statement setting  
39 forth a summary of the proposed rule, as well as a clear and concise  
40 explanation of the purpose and effect of the rule, the specific legal  
41 authority under which its adoption is authorized, a description of  
42 the expected socio-economic impact of the rule, as provided in  
43 section 2 of P.L. , c. (C. ) (pending before the Legislature as  
44 this bill), a regulatory flexibility analysis, or the statement of

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 finding that a regulatory flexibility analysis is not required, as  
2 provided in section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs  
3 impact statement which shall include an assessment of the number  
4 of jobs to be generated or lost if the proposed rule takes effect, an  
5 agriculture industry impact statement as provided in section 7 of  
6 P.L.1998, c.48 (C.4:1C-10.3), a housing affordability impact  
7 statement, a smart growth development impact statement, as  
8 provided in section 31 of P.L.2008, c.46 (C.52:14B-4.1b), and a  
9 racial and ethnic community criminal justice and public safety  
10 impact statement as required in section 3 of P.L.2017, c.286  
11 (C.2C:48B-2);

12 (3) Afford all interested persons a reasonable opportunity to  
13 submit data, views, comments, or arguments, orally or in writing.  
14 The agency shall consider fully all written and oral submissions  
15 respecting the proposed rule, including any written submissions that  
16 are received by the agency through its e-mail systems or electronic  
17 mailing lists. If within 30 days of the publication of the proposed  
18 rule sufficient public interest is demonstrated in an extension of the  
19 time for submissions, the agency shall provide an additional 30-day  
20 period for the receipt of submissions by interested parties. The  
21 agency shall not adopt the proposed rule until after the end of that  
22 30-day extension.

23 The agency shall conduct a public hearing on the proposed rule  
24 at the request of a committee of the Legislature, or a governmental  
25 agency or subdivision, or if sufficient public interest is shown,  
26 provided such request is made to the agency within 30 days  
27 following publication of the proposed rule in the Register. The  
28 agency shall provide at least 15 days' notice of such hearing, shall  
29 publish such hearing notice on its Internet website, and shall  
30 conduct the hearing in accordance with the provisions of subsection  
31 (g) of this section.

32 The head of each agency shall adopt as part of its rules of  
33 practice adopted pursuant to section 3 of P.L.1968, c.410  
34 (C.52:14B-3) definite standards of what constitutes sufficient public  
35 interest for conducting a public hearing and for granting an  
36 extension pursuant to this paragraph; and

37 (4) Prepare for public distribution, and make available for public  
38 viewing through publication on the agency's Internet website, a  
39 report listing all parties offering written or oral submissions  
40 concerning the rule, summarizing the content of the submissions  
41 and providing the agency's response to the data, views, comments,  
42 and arguments contained in the submissions.

43 (b) A rule prescribing the organization of an agency may be  
44 adopted at any time without prior notice or hearing. Such rules  
45 shall be effective upon filing in accordance with section 5 of  
46 P.L.1968, c.410 (C.52:14B-5) or upon any later date specified by  
47 the agency.

1 (c) If an agency finds that an imminent peril to the public  
2 health, safety, or welfare requires adoption of a rule upon fewer  
3 than 30 days' notice and states in writing its reasons for that finding,  
4 and the Governor concurs in writing that an imminent peril exists,  
5 the agency may proceed to adopt the rule without prior notice or  
6 hearing, or upon any abbreviated notice and hearing that it finds  
7 practicable. The agency shall publish, on its Internet website, a  
8 summary of any rule adopted pursuant to this subsection, and the  
9 statement of reasons for the agency's finding that an imminent peril  
10 exists. Any rule adopted pursuant to this subsection shall be  
11 effective for a period of not more than 60 days, unless each house  
12 of the Legislature passes a resolution concurring in its extension for  
13 a period of not more than 60 additional days. The rule shall not be  
14 effective for more than 120 days unless repromulgated in  
15 accordance with normal rule-making procedures.

16 (d) No rule hereafter adopted is valid unless adopted in  
17 substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.).  
18 A proceeding to contest any rule on the ground of noncompliance  
19 with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et  
20 seq.) shall be commenced within one year from the effective date of  
21 the rule.

22 (e) An agency may file a notice of intent with respect to a  
23 proposed rule-making proceeding with the Office of Administrative  
24 Law, for publication in the New Jersey Register at any time prior to  
25 the formal notice of action required in subsection (a) of this section.  
26 The notice shall be for the purpose of eliciting the views of  
27 interested parties on an action prior to the filing of a formal rule  
28 proposal. Such notice shall be distributed to interested persons  
29 through the use of an electronic mailing list or similar type of  
30 subscription-based e-mail service, and made available for public  
31 viewing through publication on the agency's Internet website. The  
32 agency shall afford all interested persons a reasonable opportunity  
33 to submit data, views, comments, or arguments, orally or in writing,  
34 on the proposed action, and shall fully consider all written and oral  
35 submissions, including any written submissions received by the  
36 agency through its e-mail systems or electronic mailing lists. An  
37 agency may use informal conferences and consultations as means of  
38 obtaining the viewpoints and advice of interested persons with  
39 respect to contemplated rule-making. An agency may also appoint  
40 committees of experts or interested persons or representatives of the  
41 general public to advise it with respect to any contemplated rule-  
42 making.

43 (f) An interested person may petition an agency to adopt a new  
44 rule, or amend or repeal any existing rule. Such petition may be  
45 submitted to the agency through mail, e-mail, electronic mailing  
46 list, or through any other means. Each agency shall prescribe by  
47 rule the form for the petition and the procedure for the

1 consideration and disposition of the petition. The petition shall  
2 state clearly and concisely:

3 (1) The substance or nature of the rule-making which is  
4 requested;

5 (2) The reasons for the request and the petitioner's interest in the  
6 request;

7 (3) References to the authority of the agency to take the  
8 requested action.

9 The petitioner may provide the text of the proposed new rule,  
10 amended rule or repealed rule.

11 Within 60 days following receipt by an agency of any such  
12 petition, the agency shall either: (i) deny the petition, giving a  
13 written statement of its reasons; (ii) grant the petition and initiate a  
14 rule-making proceeding within 90 days of granting the petition; or  
15 (iii) refer the matter for further deliberations which shall be  
16 concluded within 90 days of referring the matter for further  
17 deliberations. Upon conclusion of such further deliberations, the  
18 agency shall either deny the petition and provide a written statement  
19 of its reasons or grant the petition and initiate a rule-making  
20 proceeding within 90 days. Upon the receipt of the petition, the  
21 agency shall file a notice stating the name of the petitioner and the  
22 nature of the request with the Office of Administrative Law for  
23 publication in the New Jersey Register. Notice of formal agency  
24 action on such petition shall also be filed with the Office of  
25 Administrative Law for publication in the Register, and shall be  
26 made available for public viewing through publication on the  
27 agency's Internet website.

28 If an agency fails to act in accordance with the time frame set  
29 forth in the preceding paragraph, upon written request by the  
30 petitioner, the Director of the Office of Administrative Law shall  
31 order a public hearing on the rule-making petition and shall provide  
32 the agency with a notice of the director's intent to hold the public  
33 hearing if the agency does not. If the agency does not provide  
34 notice of a hearing within 15 days of the director's notice, the  
35 director shall schedule, and provide the public with a notice of, that  
36 hearing at least 15 days prior thereto. Hearing notice shall also be  
37 made available for public viewing through publication on the  
38 agency's Internet website. If the public hearing is held by the  
39 Office of Administrative Law, it shall be conducted by an  
40 administrative law judge, a person on assignment from another  
41 agency, a person from the Office of Administrative Law assigned  
42 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-  
43 5), or an independent contractor assigned by the director. The  
44 petitioner and the agency shall participate in the public hearing and  
45 shall present a summary of their positions on the petition, a  
46 summary of the factual information on which their positions on the  
47 petition are based and shall respond to questions posed by any  
48 interested party. The hearing procedure shall otherwise be

1 consistent with the requirements for the conduct of a public hearing  
2 as prescribed in subsection (g) of section 4 of P.L.1968, c.410  
3 (C.52:14B-4), except that the person assigned to conduct the  
4 hearing shall make a report summarizing the factual record  
5 presented and the arguments for and against proceeding with a rule  
6 proposal based upon the petition. This report shall be filed with the  
7 agency and delivered or mailed to the petitioner. A copy of the  
8 report shall be filed with the Legislature along with the petition for  
9 rule-making.

10 (g) All public hearings shall be conducted by a hearing officer,  
11 who may be an official of the agency, a member of its staff, a  
12 person on assignment from another agency, a person from the  
13 Office of Administrative Law assigned pursuant to subsection o. of  
14 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent  
15 contractor. The hearing officer shall have the responsibility to  
16 make recommendations to the agency regarding the adoption,  
17 amendment or repeal of a rule. These recommendations shall be  
18 made public. At the beginning of each hearing, or series of  
19 hearings, the agency, if it has made a proposal, shall present a  
20 summary of the factual information on which its proposal is based,  
21 and shall respond to questions posed by any interested party.  
22 Hearings shall be conducted at such times and in locations which  
23 shall afford interested parties the opportunity to attend. A verbatim  
24 record of each hearing shall be maintained, and copies of the record  
25 shall be available to the public at no more than the actual cost,  
26 which shall be that of the agency where the petition for rule-making  
27 originated.

28 (cf: P.L.2017, c.286, s.4)

29

30 2. (New section) a. In proposing a rule for adoption, the  
31 agency involved shall issue a description of the expected socio-  
32 economic impact of the rule prepared by a representative of the  
33 segment of the public proposed to be regulated by the rule, which  
34 shall be included in the notice of a proposed rule as required by  
35 subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4). This  
36 description shall include the anticipated impact and estimated cost  
37 of the proposed rule on the affected segment of the population to be  
38 regulated by the rule and the effect of the rule on job creation and  
39 job retention by the affected regulated community.

40 b. (1) Prior to the submittal of the proposed rule to the Office  
41 of Administrative Law for publication in the New Jersey Register,  
42 an agency shall contact one representative of the segment of the  
43 public proposed to be regulated by the rule, provide that  
44 representative with a written copy of the proposed rule, and provide  
45 the opportunity for the representative to prepare the description for  
46 the socio-economic impact of the proposed rule as provided in  
47 subsection a. of this section. The agency shall select this  
48 representative based upon a list of interested persons associated

1 with the segment of the public proposed to be regulated by the rule  
2 who have provided substantial written submissions to the agency on  
3 previous proposed rules on similar subject matter.

4 (2) Upon receipt of the description of the socio-economic  
5 impact of the proposed rule, the agency shall include, in full, that  
6 description in the proposed rule submitted to the Office of  
7 Administrative Law for publication in the New Jersey Register.

8 The Office of Administrative Law may require payment by the  
9 representative preparing the description of the socio-economic  
10 impact of the proposed rule sufficient to cover the proportional  
11 costs of printing and distributing the New Jersey Register  
12 attributable to that description.

13 c. This subsection shall not apply to any proposed rule which  
14 the agency finds would impose an insignificant impact, either  
15 because the scope of the regulation is minimal, or there is an  
16 extreme unlikelihood that the regulation would evoke a socio-  
17 economic impact. The agency's finding and an indication of the  
18 basis for its finding shall be included in the notice of a proposed  
19 rule as required by subsection (a) of section 4 of P.L.1968, c.410  
20 (C.52:14B-4).

21  
22 3. This act shall take effect immediately.  
23  
24

## 25 STATEMENT

26  
27 This bill revises the "Administrative Procedure Act," P.L.1968,  
28 c.410 (C.52:14B-1 et seq.) (APA) to add specific requirements for  
29 the socio-economic impact statement required as part of the rule-  
30 making process. The APA, enacted in 1968, establishes the  
31 procedures that agencies in the Executive branch of State  
32 government must follow when exercising their authority to adopt  
33 rules and regulations. This bill expands the requirements for the  
34 description of the expected socio-economic impact of a proposed  
35 rule-making by requiring State agencies to obtain, for inclusion in  
36 the publication of the rule proposal in the New Jersey Register, a  
37 socio-economic impact description of the proposed rule from the  
38 regulated community.

39 Under this bill, a State agency, prior to submitting a proposed  
40 rule to the Office of Administrative Law (OAL) for publication in  
41 the New Jersey Register, would be required to contact one  
42 representative of the segment of the public proposed to be regulated  
43 by the rule (i.e., the regulated community), provide that  
44 representative with a written copy of the proposed rule, and provide  
45 the opportunity for the representative to prepare a description of the  
46 socio-economic impact of the proposed rule. The agency would  
47 select the regulated community representative from among those  
48 interested persons associated with the segment of the public

1 proposed to be regulated by the rule who have provided substantial  
2 written submissions to the agency on previous rules proposals on  
3 similar subject matter. Upon receipt of the socio-economic impact  
4 description of the proposed rule, the agency would be required to  
5 include, in full, that description in the proposed rule submitted to  
6 the OAL for publication in the New Jersey Register. The bill  
7 provides that the OAL may require payment by the regulated  
8 community representative preparing the socio-economic impact  
9 description in an amount sufficient to cover the proportional costs  
10 of printing and distributing the New Jersey Register attributable to  
11 the publication of that description.

12 An agency would not be required to include a socio-economic  
13 impact description prepared by a representative of the regulated  
14 community if the agency finds that the proposed rule would impose  
15 an insignificant impact, either because the scope of the regulation is  
16 minimal, or there is an extreme unlikelihood that the regulation  
17 would evoke a socio-economic impact. In this case, the agency's  
18 finding and an indication of the basis for its finding are required to  
19 be included in the notice of a proposed rule published by OAL.